



U.S. Department of Justice

Antitrust Division

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City Center Building  
1401 H Street, NW  
Washington, DC 20530

September 20, 2004

Mr. L. D. Whitman  
Route 1  
Box 79A  
Ravenswood, West Virginia 26164

Re: *Public Comment on Proposed Amended Final Judgment in United States v. Alcan Ltd., Alcan Aluminum Corp., Pechiney, S.A., and Pechiney Rolled Products, LLC, Civil No. 1:030 CV 02012 (D.D.C., filed May 26, 2003)*

Dear Mr. Whitman:

This letter responds to your August 5, 2004, comment on the proposed Amended Final Judgment (or "AFJ") in this case. That comment is similar to your comment on the initial settlement to which the United States responded and published in the Federal Register (69 Fed. Reg. 18930, 18970-73 (Apr. 9, 2004)). Before addressing your current comment, however, it may be helpful to briefly review the major terms of the amended settlement.

The Amended Final Judgment requires Alcan to divest either its own or Pechiney's "brazing sheet business."<sup>1</sup> Alcan's brazing sheet business includes Alcan's aluminum rolling mills in Oswego, New York, and Fairmont, West Virginia, which produce the brazing sheet sold by Alcan in North America. Pechiney's brazing sheet business includes its aluminum rolling mill in Ravenswood, West Virginia, which makes the brazing sheet sold by Pechiney in North America. Prompt divestiture of either brazing sheet business to a viable new competitor would advance the public interest in competitive prices and continuing high quality and innovation in the brazing sheet market by quickly restoring the rivalry that existed in domestic sales of this crucial material before Alcan's acquisition of Pechiney. To ensure that the proposed divestiture is expeditiously completed and competition restored, the Amended Final Judgment (§ V(B)) provides that if Alcan does not sell

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<sup>1</sup>The initial proposed Final Judgment would have required Alcan (or a court-appointed trustee) to divest Pechiney's brazing sheet business. The amended settlement, on the other hand, would allow Alcan to restore competition in the brazing sheet market by selling (or spinning off) its own brazing sheet operations. Alcan has indicated that it will sell its own brazing sheet operations only as part of a major corporate reorganization, an undertaking motivated, at least in part, by business considerations unrelated to Alcan's acquisition of Pechiney. See Revised Competitive Impact Statement, n. 3.

either brazing sheet business to an acceptable purchaser by the established deadline, the Court may appoint a trustee to complete the divestiture of Pechiney's brazing sheet business.

Alcan already has taken steps to divest its own brazing sheet business by spinning it off to its shareholders along with many of Alcan's other domestic and foreign businesses. There is a possibility, however, that Alcan might choose (or a trustee later may be appointed) to divest the Pechiney brazing sheet business.

Your primary concern is that if Alcan chooses (or a trustee is appointed) to divest the Pechiney brazing sheet business, the new owner must have the resources to continue that firm's competition in marketplace.

The United States also strongly believes that if Alcan chooses to divest Pechiney's brazing sheet business, the new owner must be capable of operating the Ravenswood plant as part of an ongoing, viable new enterprise. In fact, a lynchpin of the Amended Final Judgment is the requirement that the Alcan or Pechiney brazing sheet business be divested to a person who, in the United States's judgment, is able to operate it successfully in competition against Alcan and others (*see* AFJ, §§ IV(J) and V(B)). To that end, the Amended Final Judgment requires Alcan to sell any tangible and intangible assets used in the production and sale of brazing sheet, including Pechiney's entire Ravenswood facility, and any research, development, or engineering facilities, wherever located, used to develop and produce any product – not just brazing sheet – currently rolled at the Ravenswood facility. *See* AFJ, §§ II(E)(1)-(3). Because the proposed amended decree ensures that any new purchaser of Pechiney's brazing sheet business would obtain every tangible and intangible asset previously used by Pechiney to compete in developing, making, and selling brazing sheet and any other aluminum products sold by the Ravenswood facility (*e.g.*, aerospace grade aluminum plate), there is no reason to believe that that business can only survive if it remains in the hands of a dominant aluminum manufacturing concern, such as Alcan.<sup>2</sup>

In any event, at this stage, since Alcan has not proposed a buyer for Pechiney's Ravenswood plant, much less negotiated any terms of sale, there is no reasonable basis for concluding that *any* effort to divest Pechiney's brazing sheet business will fail to produce an acceptable, viable new owner capable of continuing the firm's competition against Alcan and others in developing, producing, and selling brazing sheet in North America.<sup>3</sup> It would clearly be

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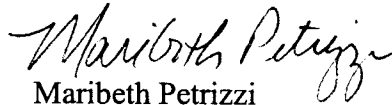
<sup>2</sup>You implicitly assume Alcan must be allowed to retain Pechiney's brazing sheet business because it would maintain current levels of employment and benefits at Ravenswood. However, a firm that acquires market power will be more likely to raise its prices and reduce its output, leading to a *reduction* in premerger employment levels.

<sup>3</sup>An "acceptable purchaser" of Pechiney's brazing sheet business would not be a firm so burdened by its former owners' legacy costs that it is not viable. *See* AFJ, § IV(J): Divestiture terms must not give the defendants "the ability unreasonably to raise the [new firm's] costs, to

an error to reject the amended settlement on speculation that an alternative purchaser will not turn up when the reasonable canvass the parties envisioned has not been allowed to run its course. *Citizens Pub. Co. v. United States*, 394 U.S. 131 (1969); *Dr. Pepper/Seven Up Cos. Inc. v. FTC*, 991 F.2d 859, 864-66 (D.C. Cir. 1993) (“good faith attempt to locate an alternative buyer” must be made before anticompetitive acquisition of failing firm may be allowed); *FTC v. Harbour Group Investments, LP*, 1990-2 Trade Cas. (CCH) ¶ 69,247 (D.D.C. 1990). See generally, Horizontal Merger Guidelines ¶ 5.2 (1990 ed.); Areeda, Hovenkamp, and Solow, Antitrust Law ¶ 952 (rev. ed.). If neither Alcan nor the trustee can find an acceptable buyer for Pechiney’s brazing sheet business, then the Court has the power to consider what additional measures should be taken, presumably including whether to relieve Alcan of its divestiture obligation. AFJ, § V(G). See generally, *Dr. Pepper/Seven Up Cos. Inc.*, 991 F.2d at 864-66.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the Federal Register and filed with the Court.

Sincerely yours,



Maribeth Petrizzi

Chief

Litigation II Section

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lower [its] . . . efficiency, or otherwise to interfere in . . . [its] ability . . . to compete effectively.”

Route 1  
Box 79A  
Ravenswood, WV 26164

August 5, 2004

Maribeth Petrizzi  
Chief, Litigation II Section  
Antitrust Division  
United States Department of Justice  
1401 H Street, NW  
Suite 3000  
Washington, DC 20530

Re: US v. Alcan et al., Case No. 1.03CV02012  
In the United States District Court for the District of Columbia

Dear Ms. Petrizzi:

I wrote to you in February concerning the potential effects of the consent decree before the Court in connection with the purchase of Pechiney by Alcan. I was concerned particularly about the divestiture of Pechiney Rolled Products required by the consent decree. There is now a revised consent decree before the Court, but that decree also could result in the divestiture of the Pechiney plant. The concerns I expressed in February are still valid now.

I was at one time plant manager at the Pechiney Rolled Products plant, and I am now chairman of the retiree group of former employees of the plant.

My chief concern and that of the other retirees is that a divestiture of the plant might result in its being sold to new owners who will not operate the plant successfully and will cause its shutdown. A shutdown of that plant would be devastating to the entire community, especially to the thousands of employees and retirees who would be left without work or the means to live decent lives.

I know that the amended decree *could* make it possible for Alcan to continue to own the plant. This would be a great relief to the community here. We doubt that any owner other than Alcan could operate the plant successfully. However, the decree also opens the possibility that Alcan might divest the plant. As I stated in my previous letter, history leads me to worry about the ability of a new owner to perform as well as Alcan. It would not be enough for a buyer simply to have the capital to acquire the plant and take on the legacy costs associated with it. The new owner must have a high level of technical capability. It must be able to do the testing necessary to satisfy the safety requirements and to test new alloys for the plant's products, aluminum plate and brazing sheet.

Because aluminum plate is used for military purposes and by the aerospace industry, intense safety testing is needed on the products. Also, developing new alloys and products for these markets require a tremendous amount of research and development. To be successful long term, it's critical that they are equivalent too or have a technological advantage over it's competitor which is Alcoa.

If the plant should close because a new owner lacks the necessary experience or technological backup, the retirees whom I represent would be in life threatening circumstances. Many retirees are dependent of benefits, especially payment of medical bills. If the medical benefits they now receive were to be shut off because of plant closing or the owner's bankruptcy or the inability of the owner to meet pension obligations, these people would have nothing to show for lives of hard work and they would be left in desperate circumstances.

If no buyer can be found as capable as Alcan to operate the Ravenswood plant, I suggest that Alcan be allowed to retain the plant, along with its own brazing sheet business.

Very truly yours,



L.D. Whitman